

ESTTA Tracking number: **ESTTA938099**

Filing date: **11/29/2018**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91228489
Party	Defendant Dr. Marsha Linehan
Correspondence Address	ERIN M. KARP CAIRNCROSS & HEMPELMANN 524 2ND AVENUE SUITE 500 SEATTLE, WA 98104-2323 UNITED STATES trademark@cairncross.com, ekarp@cairncross.com 206-254-4476
Submission	Withdrawal Of Application
Filer's Name	Erin M. Karp
Filer's email	ekarp@cairncross.com
Signature	/Erin M. Karp/
Date	11/29/2018
Attachments	Linehan Notices of Surrender_Withdrawal.pdf(133263 bytes ) Linehan Pederson Settlement Agreement.pdf(336973 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**Dr. Marsha Linehan,  
Applicant,**

**Opposition No.: 91228489  
Application Serial No.: 86/539349  
Mark: DIALECTICAL BEHAVIOR THERAPY**

**v.**

**Mental Health Systems, P.C., Lane Pederson &  
Associates, LLC, Lane Pederson, Cognitive and  
Behavioral Specialties dba Dialectical Behavior  
Therapy National Certification and  
Accreditation Association,**

**Opposers.**

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**Mental Health Systems, P.C., Lane Pederson &  
Associates, LLC, Lane Pederson, Cognitive and  
Behavioral Specialties dba Dialectical Behavior  
Therapy National Certification and  
Accreditation Association,**

**Petitioners,**

**v.**

**Dr. Marsha Linehan,**

**Respondent**

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**Cancellation No.: 92064167  
Registration No. 4,204,315  
Registration Date: September 11, 2012  
Mark: DBT**

**Mark: DIALTECTIAL BEHAVIOR THERAPY**

**Application No.: 86/539349**

**VOLUNTARY WITHDRAWAL OF APPLICATION**  
**TO REGISTER WITH CONSENT**

Applicant hereby voluntarily withdraws its application to register Application No. 86/539,349 for the mark "DIALECTICAL BEHAVIOR THERAPY" in its entirety, pursuant to the attached Settlement Agreement. The mark is the subject of an opposition filed by Opposers in Opposition No. **91228489**. Please forward all correspondence in connection with the withdrawal of the application to the undersigned attorneys.

Dated: November 30, 2018.

CAIRNCROSS & HEMPELMANN, P.S.

/S/ Erin M. Karp

Erin M. Karp  
524 Second Ave., Suite 500  
Seattle, WA 98104-2323  
Telephone: 206-254-4414  
Facsimile: 206-587-2308

Attorney for Applicant/Respondent

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**VOLUNTARY SURRENDER OF REGISTRATION**  
**FOR CANCELLATION WITH CONSENT**

Registrant hereby voluntarily surrenders Reg. No. 4.2-4.315 for the mark "DBT" in its entirety, pursuant to the attached Settlement Agreement. The mark is the subject of a petition to cancel filed by Petitioners in Cancellation Action No. **92064167**. Please forward all correspondence in connection with the cancellation of the registration to the undersigned attorneys.

Dated: November 30, 2018.

CAIRNCROSS & HEMPELMANN, P.S.

/S/ Erin M. Karp

Erin M. Karp  
524 Second Ave., Suite 500  
Seattle, WA 98104-2323  
Telephone: 206-254-4414  
Facsimile: 206-587-2308

Attorney for Applicant/Respondent

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of November 15, 2018 (“Effective Date”), by and between Marsha Linehan, PhD, ABPP (“Linehan”), and Lane Pederson, PsyD, LP (“Pederson”); Cognitive and Behavioral Specialties (“CBS”); Lane Pederson & Associates, LLC (“LP&A”); and Mental Health Systems, P.C. (“MHS”) (collectively, the “Pederson Parties”), and PESI, Inc. (“PESI”), and Evergreen Certifications, LLC (“ECI”) (collectively, the “PESI Parties”).

### Recitals

A. Linehan owns the registered mark DBT, as shown on U.S. Registration No. 4,204,315. On or about February 19, 2015, Linehan filed U.S. Application Serial No. 86/539,349 for registration of the term “dialectical behavior therapy.”

B. In 2016, the Pederson Parties commenced proceedings in the Trademark Trial and Appeal Board in opposition to U.S. Application Serial No. 86/539,349 and for cancellation of U.S. Registration No. 4,204,315 (the “TTAB proceedings”). Linehan answered the TTAB proceedings, denying the relief sought by the Pederson Parties and asserted a counterclaim for cancellation of marks owned by CBS. CBS answered the counterclaim, denying the relief sought by Linehan.

C. On or about October 4, 2017, Linehan commenced a trademark infringement action, captioned *Marsha M. Linehan v. Lane Pederson; Cognitive and Behavioral Specialties; and Lane Pederson & Associates, LLC*, Case No. 2:17-cv-01494-RSL, in the United States District Court for the Western District of Washington at Seattle (the “Lawsuit”), which resulted in a stipulated suspension of the TTAB proceedings. Thereafter, Linehan amended her Complaint to, among other things, add the PESI Parties as defendants.

D. The Pederson Parties answered the Amended Complaint, denying all liability and asserting Counterclaims against Linehan, which Linehan denies. To date, neither PESI nor ECI has been served with the Amended Complaint;

E. The undersigned parties to this Agreement wish to settle the TTAB proceedings, the Lawsuit, and any and all matters that were alleged or could have been alleged in the TTAB proceedings, the Lawsuit, or otherwise by any party hereto without further expenditure of time and expense.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the undersigned parties agree as follows:

1. **Recitals.** The Recitals set forth above are true and correct and made part of this Agreement.
2. **Definition.** For the purposes of this Agreement, a reference below to any party, individually or collectively with any other party (“Party” or “Parties”), includes any entities that said Party owns or controls, now or in the future.
3. **Disclaimer.** Each Party to this Agreement hereby disclaims any common law or statutory trademark rights in the terms “dialectical behavior therapy” and its associated acronym, “DBT” (“Term” or “Terms”) and further agrees that:
  - a. any mark incorporating one or both of the Terms that is the subject of said Party’s pending or future application for state or federal trademark registration shall also incorporate one or more distinctive words; and

b. any such application shall disclaim the exclusive right to use one or both of the Terms apart from the mark as shown.

Each of the Pederson Parties and the PESI Parties further agrees that, during Linehan's lifetime, said Party will not file an application for registration of a mark incorporating one or both of the Terms. Nothing herein shall be construed so as to prohibit any Party from using one or both of the Terms to describe said Party's goods or services.

4. **USPTO Filings.** Within seven (7) days from the Effective Date:

a. Linehan shall take the required action in the USPTO to: (i) abandon U.S. Application Serial No. 86/539,349 for registration of "dialectical behavior therapy;" (ii) cancel U.S. Registration No. 4,204,315 for "DBT," and (iii) amend any pending application to register any mark containing one or both of the Terms to disclaim the exclusive right to use any such Term or Terms apart from the mark as shown;

b. CBS shall take the required action in the USPTO to cancel U.S. Registration No. 4,214,437 for DIALECTICAL BEHAVIOR THERAPY NATIONAL CERTIFICATION AND ACCREDITATION ASSOCIATION;

c. Linehan hereby represents that, except for her registration identified in paragraph 4.a., above, she does not own any trademark registrations that incorporate one or both of the Terms; and

d. Each of the Pederson Parties and the PESI Parties hereby represents that, except for CBS's registration identified in paragraph 4.b. above, said Party does not own a trademark registration and has no pending application for registration of any mark that incorporates one or both of the Terms.

5. **Joint Statement.** The Parties agree that the following joint statement may be used by any Party as she, he, or it deems fit:

*Marsha Linehan, PhD, ABPP, is not affiliated with PESI, Inc.; Evergreen Certifications, LLC; Cognitive and Behavioral Specialties; Lane Pederson & Associates, LLC; or Lane Pederson, PsyD, LP. There may be differences in services offered by providers of dialectical behavior therapy (DBT). Consumers of DBT training, consultation, and therapy services should research and investigate their options to determine the best fit.*

6. **No Association.** From the Effective Date until Linehan's death or November 15, 2028, whichever occurs later, each of the Pederson Parties and the PESI Parties agrees that the Party:

a. shall not use Linehan's likeness for any purpose;

b. shall not use Linehan's name on promotional materials in the nature of advertising for DBT-related trainings, seminars, certifications, and conferences, except as provided in paragraph 6.d., below;

c. shall identify Pederson as the instructor or author, as appropriate, of any DBT-related trainings or program materials taught by Pederson; and

d. shall include the following disclaimer on any promotional materials in the nature of advertising and program materials for DBT-related trainings, seminars, certifications, or conferences:

*[NAME] is not affiliated or associated with Marsha M. Linehan, PhD, ABPP, or her organizations.*

However, Linehan acknowledges and agrees that no Party shall have any responsibility for any use of her likeness or any use or nonuse of her name if such use or nonuse was not within said Party's control.

7. **Release by Linehan.** Linehan, for herself and on behalf of any entities directly or indirectly owned or controlled by her, hereby absolutely and unconditionally release, acquits, and forever discharges the Pederson Parties, the PESI Parties, and their respective directors, officers, employees, agents, and affiliates (the "Pederson/PESI Released Parties") from any and all claims, demands, actions, damages, and liabilities (including attorney fees), whether direct or indirect, fixed or contingent, known or unknown, that they have ever had, have, or claim to have against the Pederson/PESI Released Parties for or by reason of any matter, act, or thing prior to the Effective Date, including but not limited to all claims that were asserted or could have been asserted in the TTAB proceedings or the Lawsuit.

8. **Release by the Pederson Parties.** The Pederson Parties, for themselves and on behalf of any entities owned or controlled by them, hereby absolutely and unconditionally release, acquit and forever discharge Linehan from any and all claims, demands, actions, damages and liabilities (including attorney fees), whether direct or indirect, fixed or contingent, known or unknown, that they have ever had, have, or claim to have against Linehan, for or by reason of any matter, act, or thing prior to the Effective Date, including but not limited to all claims that were asserted or could have been asserted in the TTAB proceedings or the Lawsuit.

9. **Release by PESI Parties.** The PESI Parties, for themselves and on behalf of any entities owned or controlled by them, hereby absolutely and unconditionally release, acquit and forever discharge Linehan from any and all claims, demands, actions, damages and liabilities (including attorney fees), whether direct or indirect, fixed or contingent, known or unknown, that they have ever had, have, or claim to have against Linehan, for or by reason of any matter, act, or thing prior to the Effective Date, including but not limited to all claims that were asserted or could have been asserted in the TTAB proceedings or the Lawsuit.

10. **Stipulations.** Upon performance of the obligations set forth in paragraph 4, above, the Parties, through their respective counsel, shall execute and file in the Lawsuit a stipulation of dismissal with prejudice and without attorney fees or costs to any Party and shall take the required action to terminate the TTAB proceedings with consent and without prejudice to any Party.

11. **Complete Agreement.** The Parties acknowledge and represent that no promise or representation not contained in this Agreement has been made to them and that all preliminary and contemporaneous negotiations are merged into and incorporated in this Agreement. This Agreement contains the entire agreement between the Parties and shall not be modified or amended in any manner except by an instrument in writing executed by the Parties hereto.

12. **Knowing and Voluntary Execution.** The Parties acknowledge that each has read this Agreement, has had an opportunity to consult with legal counsel, and understands all of the terms and conditions set forth herein and their obligations hereunder, and that this Agreement is executed voluntarily, without duress, and with full knowledge of its legal significance.

13. **Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, representatives, affiliates, successors and assigns.

14. **Construction.** This Agreement shall not be construed against the Party preparing it, but shall be construed as if all Parties jointly prepared it.

15. **Severability.** If any provision of this Agreement shall be unlawful, void, or unenforceable in whole or in part for any reason, such provision or part thereof shall be deemed severed from this Agreement, which shall not affect the validity or enforceability of the remainder of this Agreement.

16. **Cooperation.** Upon written request, each Party agrees to make, execute, and deliver such documents or take such other actions as reasonably necessary to accomplish the purposes of this Agreement.

17. **Survival.** The Parties agree that the provisions of paragraphs 2, 3, 4, 5, 6, 7, 8, 9, and 10 shall survive the performance of obligations under or termination of this Agreement.

18. **Attorney Fees.** In any action for a material breach of any provision of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney fees and costs arising out of any such breach. "Prevailing Party" shall mean the party whose position is substantially sustained in the final judgment rendered in such litigation.

19. **Authority.** Each Party represents and warrants that she, he, or it is authorized to enter into this Agreement and that the person executing this Agreement on said Party's behalf has the capacity, full power and authority to bind it to each and every provision of this Agreement.

20. **Counterparts; Electronic Transmission.** This Agreement may be executed in counterparts by the Parties with the same force and effect as if a single copy of this Agreement was executed by the Parties, and a signature transmitted by facsimile or in another electronic form shall be deemed an original signature for purposes of this Agreement.


*(signature page follows)*



IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the Effective

Date:

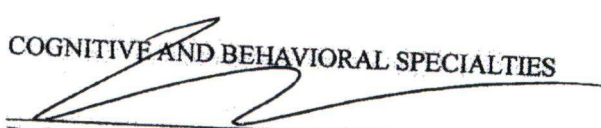
11/15/10



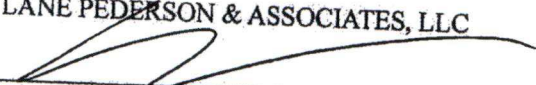
Marsha M. Linehan, PhD, ABPP

  
Lane Pederson, PsyD, LP

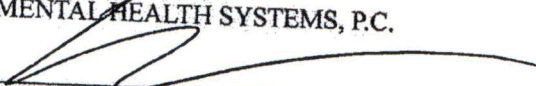
COGNITIVE AND BEHAVIORAL SPECIALTIES

  
By Lane Pederson, PsyD, LP  
Its Chief Executive Officer

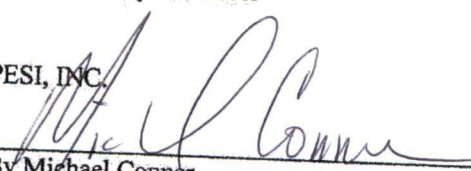
LANE PEDERSON & ASSOCIATES, LLC

  
By Lane Pederson, PsyD, LP  
Its Managing Member

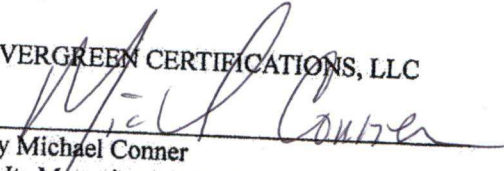
MENTAL HEALTH SYSTEMS, P.C.

  
By Lane Pederson, PsyD, LP  
Its Secretary-Treasurer

PESI, INC.

  
By Michael Conner  
Its Executive Director

EVERGREEN CERTIFICATIONS, LLC

  
By Michael Conner  
Its Managing Member